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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44758
)	
v.)	ADA COUNTY NO. CR-FE-2016-4562
)	
DONALD JOSEPH MAILLOUX, JR.,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Donald Joseph Mailloux, Jr., pled guilty to possession of a controlled substance, and the district court sentenced him to a unified five-year term, with one and one-half years fixed. On appeal, Mr. Mailloux asserts that, in light of the mitigating facts of this case, the district court's refusal to either place him on probation or reduce the fixed portion of his sentence was unreasonable, representing an abuse of discretion.

Statement of the Facts & Course of Proceedings

Police stopped Mr. Mailloux on his way home from a party and found marijuana, methamphetamine, and several pipes on Mr. Mailloux and in his vehicle. (R., pp.61-64; PSI, pp.

4, 61.) The State charged him with possession of methamphetamine, possession of marijuana, and possession of drug paraphernalia, and alleged he was a persistent violator. (R., pp.35-36, 52, 76.) Pursuant to the terms of an agreement, Mr. Mailloux pled guilty to possession of methamphetamine, and in exchange, the State agreed to dismiss the remaining charges and withdraw its persistent violator allegation. (Tr., p.5, L.25 – p.6, L. 9).

The presentence investigator provided the district court with a report that concluded Mr. Mailloux was a viable candidate for community supervision, so long as there was a plan for treatment (PSI, p.21); Mr. Mailloux agreed to treatment, and he asked for probation so that he could take care of his aging parents and provide support for his son, as well as attend to his own medical needs. (Tr., p.31, Ls.9-14). But the State opposed probation, claiming Mr. Mailloux was unlikely to comply with treatment and therefore posed a risk to the community. (Tr., p.27, L.13 – p.31, L.6.) The district court sentenced Mr. Mailloux to a unified term of five years with one and one-half years fixed, and, siding with the State, the court declined to grant him probation. (R., pp.114-116; Tr., p.40, Ls.15-22.)

Mr. Mailloux filed an Idaho Criminal Rule 35 motion, asking the court, again, to suspend his sentence and give him an opportunity to prove himself on probation; alternatively, he asked that the court reduce the fixed portion of his sentence to a half (.5) year. (Aug., p.1.) In support of his motion, Mr. Mailloux provided numerous letters from family members, friends, and employers. (Aug., pp.3-13.) The district court denied the motion. (Aug., p.18.) Mr. Mailloux filed a notice of appeal that is timely from his judgment, and from the denial of his Rule 35 motion. (R., p.121.) *See* I.A.R. 14(a).

ISSUE

Given the mitigating facts of this case, did the district court abuse its discretion when refused to place Mr. Mailloux on probation, or reduce the fixed portion of his sentence, as requested in his Rule 35 Motion?

ARGUMENT

The District Court Abused Its Discretion When It Refused to Place Mr. Mailloux On Probation, Or Reduce His Sentence, As Requested In His Rule 35 Motion

A. Introduction

Mr. Mailloux asserts that, in view of the mitigating circumstances of his case, including the information he presented in conjunction with his Rule 35 motion, the district court's denial of that motion, and refusal to place him on probation or reduce his sentence, represents an abuse of the court's sentencing discretion.

B. Standard Of Review

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* "If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.*

Where a defendant challenges his sentence as excessively harsh, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court's sentencing decisions for an abuse of

discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834.

C. In Light Of The Mitigating Facts In This Case, The District Court’s Refusal To Place Mr. Mailloux On Probation, Or Else Reduce The Fixed Portion Of His Sentence, Was Unreasonable, Representing An Abuse Of Discretion

Mr. Mailloux was 54 years old at the time of his sentencing. (PSI, p.2.)¹ He was in the process of moving to Seattle to help care for his aging parents. (Tr., p.37, Ls.17-21.) His mother, now in her 80’s, can no longer fully care for his father, who has dementia, and they need Mr. Mailloux’s assistance more than ever. (Tr., p.37, Ls.17-21; Aug.p.8.) Mr. Mailloux also continues to deal with his own serious, continuing health issues: he has had bladder cancer and a concern that it might return or be spreading, and he requires continued medical care in the community. (Tr., p.37, Ls.12-16; PSI, pp.16, 28-32; Aug., pp.8-10.)

Mr. Mailloux poor health, and his willingness to help his family, both serve as mitigation in this case. *See State v. Nice*, 103 Idaho 89, 91 (1982); *State v. James*, 112 Idaho 239, 243-44 (Ct. App. 1986). He is known to be an attentive and loving father (PSI, pp.192, 193; Aug., p.8), and he wants to continue to work to provide for his son’s support (PSI, p.14) – facts that also warrant consideration by this Court. *See State v. Nice*, 103 Idaho at 91.

When the district court declined to place Mr. Mailloux on probation at sentencing, it stated: “You’re not going to succeed. I just – I don’t believe that you will succeed because I

¹ Citations to the Presentence Investigation Report and attached materials will use the designation “PSI” and will include the page numbers associated with the 219-page electronic file containing those documents.

don't think that you take it seriously.” (Tr., p.40, Ls.6-9.) However, Mr. Mailloux *did* take his opportunity for probation very seriously. He had explained to the presentence investigator that he wants to better himself, his life, and his son's life, and he feels capable of abstaining from drug use. (PSI, p.18.) And at sentencing, he told the court he would willingly complete classes offered at the jail, and that he would participate in any recommended treatment (Tr., p.31, L.15 – p.32, L.1), which, according to the GAIN-1 report, includes intensive, outpatient treatment, random drug testing, and vocational rehabilitation services (PSI, p.136). Later, in connection with his Rule 35 motion, he provided the court with letters from individuals who have known him for years, detailing his work ethic, and his devotion to his parents and his son, and his medical condition that needs attention. (Aug., pp.5-13.)

Mr. Mailloux remains highly motivated to stay clean and sober, and stay on probation, so that he can care for his family. (PSI, p.19.) His mother and father had been great parents, providing his housing and employment long into his adult life, and Mr. Mailloux recognizes his obligation, and opportunity, to repay that kindness. (PSI, p.12.) He has employable skills as a craftsman and carpenter, and will likely have a construction job waiting for him in Washington. (PSI, pp.193, 194, 195.) And he can continue developing his own restoration business, a project he had begun prior to his incarceration. (Aug., p.11.)

In light of the mitigating circumstances presented in this case, the district court's refusal to place Mr. Mailloux on probation, or reduce the fixed portion of his sentence, represents an abuse of discretion.

CONCLUSION

Mr. Mailloux respectfully requests that this Court remand his case to the district court with instructions to place him on probation, or else reduce the fixed portion of his sentence to time served.

DATED this 17th day of July, 2017.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of July, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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INMATE #69568
ISCC
PO BOX 70010
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MICHAEL REARDON
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas